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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91233690
Party	Defendant Rusty Ralph Lemorande
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Submission	Opposition/Response to Motion
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Date	03/28/2018
Attachments	NOLD.Applicant Surrebuttal.SEND.pdf(624932 bytes )

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

Serial No: 87090468  
Publication date: 11/29/2016  
Opposition Number: 91233690  
For the Mark: NIGHT OF THE LIVING DEAD

Rusty Lemorande <i>in pro per</i>	)
	)
Petitioner,	)
	)
vs.	)
	)
IMAGE 10, INC.	)
	)
Respondent.	)
	)

**OPPOSER’S SURREBUTTAL TO OPPOSER’S OPPOSITION TO**  
**APPLICANT’S COMBINED MOTION TO COMPEL**  
**AND**  
**MOTION TO EXTEND DISCOVERY AND TRIAL DATES**

Opposer, in its opposition to the above referenced motion (“Motion”), misstates facts and makes allegations that are erroneous and possibly designed to inappropriately influence the TTAB in its decision regarding the Motion.

To wit, Opposer states:

*“Applicant had served 105 document production requests upon Opposer, to which Opposer had provided objections and some responses to the first 75.”*

This is true. However, as stated in the Motion, Opposer did not make a general objection, as the rule requires, providing some responses with promises of forthcoming documents. As stated in the Motion, this arguably constituted a waiver and created a

reasonable expectation that no further objection beyond the various pattern objections in Opposer's response document.

Opposer then states:

*"Per the TTAB Order of February 8, 2018, Opposer properly amended its responses as set forth in Trademark Rules 2.120(d) and (e), as well as TBMP 405.03(e) and 406.05, objecting to each of the discovery requests on the basis that they violate 37 C.F.R. §2.120(e)."*

What is disingenuous in this is that **Opposer waited 28 days** to make such an objection, which if appropriate (which Applicant argued, in his Motion, is not given the clear waiver expressed by supplying some responses and promising forthcoming documents) showed either negligence or a calculated attempt to box Applicant out of discovery, raising the objection merely a few days prior to the Discovery deadline.

The TTAB rule pertaining to a 'general objection' clearly states:

*If a party upon which requests have been served believes that the number of requests served exceeds the limitation specified in this paragraph, and is **not willing to waive this basis for objection**, the party shall, within the time for **(and instead of)** serving responses and specific objections to the requests, serve a general objection.* [Emphasis added].

Clearly the above rule states that a party should serve a general objection only 'instead of' serving responses, and only if 'not willing to waive' this basis for objection. Both conditions, stated in the conjunctive, were unmet by Opposer. Therefore, a clear resulting understanding by any reasonable person – whether experienced counsel or *in proper* – would be that responses would be forthcoming. Applicant, honestly and in good faith, waited on Opposer and to his detriment if the TTAB should find in favor of Opposer in this matter.

Opposer further states:

*“Again, given that the TTAB had issued its order on February 8, 2018, Applicant did not take any action with regard to the contents of the order to narrow the number of document production requests until just days before the close of discovery. Such delay appears to be for purposes of lengthening these opposition procedures and harassing Opposer, and not for the purposes of legitimate discovery.”*

This is a misstatement of the events, and speculation, at best, apparently designed to prejudice the TTAB against Applicant’s action. In fact, Opposer waited 28 days to state its objection subsequent to the TTAB order. As stated, Applicant reasonably and in good faith awaited the promised documents from Opposer, rationally understanding that Opposer had waived its objection by 1) partially responding, 2) promising forthcoming documents. Additionally, Applicant had more than a reasonable belief that Opposer would comply with the TTAB order that specifically stated:

*“Opposer is allowed thirty days from the mailing date of this order to serve supplemental responses to Applicant’s first set of requests for admission, **requests for production**, and interrogatories commensurate with the discovery guidelines set forth in this order.”* [Emphasis added]

In other words, a plain reading of the TTAB order states that supplemental requests for production were to be served by Opposer to Applicant. The order clearly does not state, as an alternative, that a general objection could be made. If this seemed ambiguous to Opposer, it seems to have had an obligation to at least communicate this ambiguity and possible confusion in a meet and confer communication with Applicant.

It did not. Applicant properly met and conferred on this matter to no avail. (See Exhibit C. Highlights added.)

In good faith, Applicant waited those 30 days only to receive only an 11<sup>th</sup> hour ‘general objection’. As a result, after receiving this surprising ‘objection’, Applicant

promptly compiled and sent a revised document request. (See Exhibit A.)

In addition, Opposer continued perpetuating its possible negligence or deception by actually responding, by email, to Applicant's requests for tax records, not by stating it generally objected to the totality of the document requests, but by making specific arguments against the production of tax returns. This back-and-forth went on for some time, and in no instance did Opposer state a general objection based on the excess number of requests. (See Exhibit B – A sample only of Emails pertaining to Applicant's requests and responses. Highlights added).

Opposer's then states that Applicant's action:

*"...appears to be for purposes of lengthening these opposition procedures and harassing Opposer, and not for the purposes of legitimate discovery."*

Hopefully, the TTAB will be reminded of its own finding that Opposer did not properly comply with any of the initial discovery requests, ordering Opposer to readdress the matter. This failure to properly comply initially (except with largely boilerplate rejections) clearly unnecessarily lengthened the proceedings, expending time and resources not only for Applicant but for the TTAB. To call this 'harassment' as Opposer does seems dissembling, and my Opposer's current stance it seems, once again, to be causing needless delay and, perhaps, harassment.

Opposer next states:

*"Applicant clearly is not familiar with the procedures as set forth in Chapter 37 of the Code of Federal Regulations."*

This is not true. Applicant respectfully submits that he has made every effort to be

scrupulous in following the rules, and any error could be deemed excusable, and certainly has not prejudiced Opposer.

Opposer states:

*“Opposer is under no obligation to teach Applicant about the Code of Federal Regulations to ensure that he is aware of how things should be properly done.”*

This is not only an inapposite statement but is downright silly. Even a grade-schooler would know not to seek ‘teaching’ from an adversary. In fact, it appears Opposer has, through its ‘teaching’, attempted to misdirect Applicant. See, for example, Exhibits B & C in which Opposer states a proposition that simply isn’t true – that Tax Records are never admissible. Applicant properly researched the issue and provided proof to Opposer. In other words, Applicant was clearly not persuaded by Opposer’s ‘teaching’.

Opposer further states:

*“Applicant’s amended requests are untimely.”*

Again, Applicant respectfully asserts that Opposer’s possibly intentional and dissembling maneuvers were designed to ambush Applicant and box him into a discovery corner. Applicant requests that the TTAB not allow this to occur.

Opposer next states:

*“Applicant should not be given special treatment because he is proper.”*

Applicant does not seek special treatment as he stated in his Motion. The problem is not a failure by Applicant to comprehend the Code of Federal Regulations, but badly placed good faith and belief in Opposer’s promises and waiver.

Most egregiously, Opposer states:

*“Opposer has had to file responses to Applicant’s multiple Motions to Compel, which are inappropriate and unnecessary.” [Emphasis added]*

This statement seems an offense not only to Applicant but also to the TTAB. Clearly, Opposer’s initial discovery responses were non-responsive and inappropriate. The subsequent order by the TTAB proves this. Applicant submits that Opposer's delay in stating its 'general objection', and prior promises of forthcoming documents, now causes the current situation. In fact, Opposer has been dilatory on several occasions. For example, only upon an inquiry a week after the deadline for initial discovery did Opposer submit its responses. Applicant did not object. Opposer later claimed it had failed to make a proper email connection but, as of this date, has not explained why this delay was not immediately communicated to Applicant, or why Opposer failed to then utilize a DROPBOX created exclusively for Opposer's use, a use which Opposer ignored causing further delay of a document which once received by mail clearly could not have exceeded the stated 25mb email attachment limit.

Applicant does not seek special treatment as he stated in his Motion, and, for all the reasons stated above, applicant does not believe that the delays should be attributed to Applicant, or at least, if so, in the minority of instances, if any.

### **CONCLUSION**

In summary, Applicant asserts that Opposer once again, rather than allowing fair discovery which might resolve the opposition swiftly, saving Image 10, Applicant and the TTAB unnecessary costs and delays, is possibly using tactical procedures and both misstatement and misapplication of the rules to pursue its litigation.

As of this date, more than SEVEN MONTHS since Applicant’s document requests

were first propounded, **Applicant still has received nothing**. Surely, this will be seen, by the TTAB, as unfair and a violation of basic discovery purposes and intentions.

**CERTIFICATION OF GOOD FAITH EFFORT TO RESOLVE DISPUTE**

In accordance with Trademark Rule 2.120(e), Petitioner hereby certifies that he has made a good faith effort to resolve the issues presented above.

**SUSPENSION PENDING RESOLUTION**

With respect to the effect of a motion to compel discovery, the Trademark Rules of Practice provide:

When a party files a motion for an order to compel initial disclosure, expert testimony disclosure, or discovery, the case will be suspended by the Board with respect to all matters not germane to the motion.

37 C.F.R. § 2.120(e)(2).

Respectfully, Petitioner asks that this matter be suspended, and the trial dates extended and/or reset pending resolution of this motion.

Dated: March 27, 2018

Respectfully submitted,

*Rusty Lemorande*  
*In Pro Per*  
1245 North Crescent Heights  
Blvd.  
Los Angeles, CA 90046  
Telephone: (323) 309 6146

/Rusty Lemorande/  
Rusty Lemorande.  
*In Pro Per*

**CERTIFICATE OF SERVICE AND FILING**

I hereby certify that a copy of the foregoing APPLICANT'S SURREBUTAL TO **OPPOSER'S OPPOSITION TO APPLICANT'S COMBINED MOTION TO COMPEL AND MOTION TO EXTEND DISCOVERY AND TRIAL DATES** was served on counsel for Image 10 LLC by e- mailing said copy, as agreed by counsel, on March 27, 2018, to the following email address: Michael Meeks. At [mmeeks@buchalter.com](mailto:mmeeks@buchalter.com), Farah Bhatti at [fbhatti@buchalter.com](mailto:fbhatti@buchalter.com), and [hblan@buchalter.com](mailto:hblan@buchalter.com)

/Rusty Lemorande/  
Rusty Lemorande

# **EXHIBIT A**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

IMAGE TEN, INC.  Opposer  v.  RUSTY LEMORANDE  Applicant	Opposition No. 91233690  <b><u>RUSTY LEMORANDE'S SECOND SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS</u></b>
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PROPOUNDING PARTY: Rusty Lemorande ("Rusty")  
RESPONDING PARTY: Image Ten, Inc.  
REQUEST SET NO.: One

Pursuant to the provisions of Rule 34 of the Federal Rules of Civil Procedure and Rule 2.120 of the Trademark Rules of Practice, Applicant Rusty Ralph Lemorande ("Applicant") hereby requests that Opposer Image Ten, Inc. ("Opposer") produce the following documents and other tangible things within the possession, custody, or control of Applicant.

**DEFINITIONS.**

1. "Action" shall mean any law suit, arbitration, opposition proceeding, cancellation proceeding, or other legal action before a court, tribunal or regulatory agency with the power to grant relief.

2. "Mark" shall mean the phrase "NIGHT OF THE LIVING DEAD" or variations on such phrase for use with Motion Picture creation, production, distribution or licensing.

3. "Motion Picture" shall mean a movie, film, made for television movie, or other commercial moving picture medium.

4. "Rusty" shall mean Rusty Lemorande an individual and resident of California.

5. "Document" is used in its customary broad sense to include, by way of illustration only and not by way of limitation, all written or graphic matter of every kind and description,

1 whether printed or reproduced by any process, or written and/or produced by hand, whether final  
2 or draft, original or reproduction, whether in actual or constructive possession, custody, or  
3 control of the party, including: letters, correspondence, memoranda of telephone or personal  
4 conversations, emails, microfilm, microfiches, telegrams, books, magazines, newspapers,  
5 advertisements, periodicals, bulletins, circulars, brochures, pamphlets, statements, notices,  
6 advertising layouts, trade letters, press releases, reports, rules, regulations, directives, teletype or  
7 telefax messages, minutes or records of meetings, interoffice communications, financial  
8 statements, ledgers, books of account, proposals, prospectuses, offers, orders, receipts, working  
9 papers, desk calendars, appointment books, logs, diaries, routing slips, time sheets, logs, movies,  
10 tapes (or visual or audio reproductions), drawings, blueprints, sketches, plans, graphs, charts,  
11 photographs, shipping papers, purchase orders, phonograph records, data processing paper  
12 results, data printouts and computations (both in hard-copy form and stored in memory  
13 components) transcripts of oral statements or testimony.

14 6. “Identify” (a) when used with respect to a person means to set forth the name,  
15 business position, business address and telephone number, and residential address and telephone  
16 number of such person; (b) when used with respect to a Gaming License, means to set forth the  
17 jurisdiction where the license was granted, the government or regulatory agency that issued the  
18 license, the category or type of license, and current status of license: (c) when used with respect  
19 to a Gaming Application, means to set forth the jurisdiction where the application was submitted,  
20 the date the application was submitted, the category or type of license applied for, and the current  
21 status of application; (d) when used with respect to a Hotel, means to set forth the complete name  
22 of the hotel, its physical address, telephone number and website address, and; (e) when used in  
23 any other context shall be construed according to its common meaning to require the disclosure  
24 of Your knowledge or information in Your possession that is necessary to establish the identity  
25 of the subject matter to which the interrogatory pertains.

26 7. “Oppositions” shall mean any forms of objection or opposition to a Third Party’s  
27 use of a particular trademark, service mark, trade name or fictitious firm name, including but not  
28 limited to any cease and desist letter, a complaint filed in any court having competent jurisdiction

1 over the relevant subject matter, any letter of protest submitted to the USPTO, any request for an  
2 extension of the time to oppose a Third Party's mark, or any opposition proceeding commenced  
3 with the TTAB.

4 8. "Person/Entity" shall mean any natural person, firm, partnership, joint venture,  
5 sole proprietorship, association, contractor, consultant, expert, institution, corporation,  
6 unincorporated organization, trust, business entity, any other legal entity, or other entity of any  
7 description.

8 9. "Third Party(ies)" shall mean all Persons other than Rusty and Image 10.

9 10. "TTAB" shall mean the Trademark Trial and Appeal Board of the USPTO

10 11. "USPTO" shall mean the United States Patent and Trademark Office.

11 12. "You" and "Your" shall refer to the named Opposer in this action, Image Ten,  
12 Inc. The terms "You" or "Your" shall also refer to Your agents, Your employees, Your  
13 representative, Your insurance companies, their agents, their employees, Your attorneys, Your  
14 accountants, Your investigators, or any Person/Entity(s) (as defined above) acting on Your  
15 behalf or at Your request.

### 16 INSTRUCTIONS

17 1. These Requests for Production are continuing in character so as to require prompt  
18 further responses to these requests if additional information is obtained or if you learn that the  
19 response is in some material respect incomplete or incorrect.

20 2. If and to the extent you refuse to produce any documents or portions thereof upon  
21 any claim of privilege, please state with particularity the privilege(s) claimed and all  
22 foundational facts upon which you base each claim of privilege, including a description of each  
23 document, its date, author, recipient or addressee, subject matter, custodian, and the names of  
24 any other individuals with access to the document.

25 3. If you contend that only a portion of a document described in this Request for  
26 Production of Documents is privileged or otherwise not subject to production, you are instructed  
27 to produce a copy of the entire document deleting that portion deemed privileged or otherwise  
28 not subject to production. With respect to the deleted portion of any such document, to the

1 extent that the produced portion of the document does not do so, you are instructed to provide the  
2 same information, which would be provided if the entire document were produced.

3 4. You are instructed to produce all documents described in this Request for  
4 Production of Documents that are within your possession, custody, or control. For purposes of  
5 this request, a document shall be deemed within your possession, custody, or control if (a) it is in  
6 your or your agents' physical possession or custody; or (b) it is not in your or your agents'  
7 physical possession or custody, but you have the legal right to obtain it. Thus, this request  
8 reaches not only all documents within the physical possession or custody of you and your  
9 directors, officers, or managerial employees and members, but also all documents within the  
10 possession or custody of people or entities over whom you or your directors, officers, and  
11 managerial employees and members have control, such as secretaries, subordinates, attorneys,  
12 accountants, agents, affiliates, subsidiaries, and associated companies. If you have knowledge of  
13 the existence of any document(s) described in this Request for Production of Documents, but  
14 contend that it is not within your or your agents' possession, custody, or control, you are  
15 instructed to provide the following information with respect to each document: (a) a description  
16 of the document in as much detail and with as much particularity as possible; (b) the number of  
17 pages comprising the document; (c) the name of the person or persons who prepared or authored  
18 the document; (d) the name of each person to whom the document was addressed and  
19 distributed; (e) the name of each person who received a copy of the document; (f) the date on  
20 the document; (g) a specific description of the contents of the document; and (h) the basis for  
21 your objection to production of the document.

22 5. If any document otherwise required to be produced pursuant to this Request for  
23 Production has been destroyed or lost, state: (a) the approximate date on which the destruction  
24 occurred; (b) the manner in which the destruction occurred; (c) the reason for the destruction; (d)  
25 the specific contents and form of the document; (e) the name of each person or persons who  
26 prepared or authored the document; (f) the name of each person to whom the document was  
27 addressed or distributed; (g) the name of each person who received a copy of the document; (h)  
28

1 the date of the document; and (i) the name of the person under custody or possession of the  
2 document when destroyed or last seen.

3 6. The use of the singular form of any word used herein includes the plural form,  
4 and vice versa.

5 7. The use of the masculine form of any word used herein includes the feminine and  
6 neuter genders.

7 8. “And” and “or” shall be construed either disjunctively or conjunctively to bring  
8 within the scope of the request all information and responses within the general scope of the  
9 request.

### 10 **REQUESTS FOR PRODUCTION**

11 **Request for Production No. 1:** Produce copies of all licenses that identify You as a  
12 licensor of the Mark.

13 **Request for Production No. 2:** Produce copies of licenses that identify You as the  
14 licensee of the Mark.

15 **Request for Production No. 3:** Produce copies of all assignments of the Mark.

16 **Request for Production No. 4:** Produce all Documents that evidence your  
17 ownership of the Mark in the United States.

18 **Request for Production No. 5:** Produce copies of complaints and other documents  
19 filed by You or on Your behalf regarding any Action You have filed regarding the Mark.

20 **Request for Production No. 6:** Produce copies of financial statements showing all  
21 income earned by you from use of the Mark for Motion Pictures in the last 20 years.

22 **Request for Production No. 7:** Produce all other Documents in Your possession,  
23 not produced in response to Requests #1-6 above, that in any manner reference, memorialize,  
24 acknowledge, mention, discuss or otherwise pertain to Your ownership of the Mark for Motion  
25 Picture production.

26 **Request for Production No. 8:** Produce all Documents to support the claims You  
27 made in the Notice of Opposition.  
28

1           **Request for Production No. 9:**     Produce all Documents to support your answer to  
2 Request for Admission #1 in Rusty Lemorande's First Set of Requests for Admission.

3           **Request for Production No. 10:**   Produce all Documents to support your answer to  
4 Request for Admission #2 in Rusty Lemorande's First Set of Requests for Admission.

5           **Request for Production No. 11:**   Produce all Documents to support your answer to  
6 Request for Admission #3 in Rusty Lemorande's First Set of Requests for Admission.

7           **Request for Production No. 12:**   Produce all Documents to support your answer to  
8 Request for Admission #4 in Rusty Lemorande's First Set of Requests for Admission.

9           **Request for Production No. 13:**   Produce all Documents to support your answer to  
10 Request for Admission #5 in Rusty Lemorande's First Set of Requests for Admission.

11          **Request for Production No. 14:**   Produce all Documents to support your answer to  
12 Request for Admission #6 in Rusty Lemorande's First Set of Requests for Admission.

13          **Request for Production No. 15:**   Produce all Documents to support your answer to  
14 Request for Admission #7 in Rusty Lemorande's First Set of Requests for Admission.

15          **Request for Production No. 16:**   Produce all Documents to support your answer to  
16 Request for Admission #8 in Rusty Lemorande's First Set of Requests for Admission.

17          **Request for Production No. 17:**   Produce all Documents to support your answer to  
18 Request for Admission #9 in Rusty Lemorande's First Set of Requests for Admission.

19          **Request for Production No. 18:**   Produce all Documents to support your answer to  
20 Request for Admission #10 in Rusty Lemorande's First Set of Requests for Admission.

21          **Request for Production No. 19:**   Produce copies of all tax returns in any years in  
22 which You claim to have received income or revenue from use of the of the Mark.

23          **Request for Production No. 20:**   Produce copies of all receipts and invoices in any  
24 years in which You claim to have received income or revenue from use of the Mark.

25          **Request for Production No. 21:**   Produce copies of all tax returns in any years in  
26 which Mr. John A. Russo claims to have received income or revenue from use of the of the  
27 Mark.  
28

1           **Request for Production No. 22:**     Produce copies of all tax returns in any years in  
2 which Mr. Russell Streiner claims to have received income or revenue from use of the of the  
3 Mark.

4           **Request for Production No. 23:**     Produce copies of all tax returns in any years in  
5 which Mr. Mr. Gary Streiner claims to have received income or revenue from use of the of the  
6 Mark.  
7

8           **Request for Production No. 24:**     Produce copies of all invoices and receipts in any  
9 years in which You claim to have received income or revenue from use of the of the Mark for  
10 tee-shirts, toys, and other merchandise as described in your Answers to Interrogatories, Set 1.

11           **Request for Production No. 25:**     Produce all correspondence, including copies of  
12 agreements, between You and Robert Lucas as referenced in your Answer to Interrogatory 15.  
13

14           **Request for Production No. 26:**     Produce all documents evidencing annual gross  
15 revenue received from the conduct of entertainment media production for each of the past five  
16 years as described in Interrogatory No 31.

17           **Request for Production No. 27:**     Provide copies of all documents evidencing annual  
18 gross revenue You have received from your use or licensing of the Mark for the production of a  
19 Motion Picture in the last ten years.  
20

21           **Request for Production No. 28:**     Produce copies of all documents which evidence  
22 each documentary concerning the title “Night of the Living Dead” and the Mark as reported by  
23 you in the answer to Interrogatory N. 33.

24           **Request for Production No. 29:**     Provide copies of all documents evidencing any  
25 revenue generating activity regarding the Mark as described by you in answer to Interrogatory  
26 No. 34.  
27  
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1           **Request for Production No. 30:**     Provide copies of all licenses for action figures, toys,  
2 T-shirts, videos, movie stills and similar as described by you in your answer to Interrogatory No.  
3 34.

4           **Request for Production No. 31:**     Provide all written documents evidencing the horror  
5 conventions described by you in Answer to Interrogatory No. 34.

6           **Request for Production No. 32:**     Provide documentary evidence of the ‘merchandise  
7 and signatures from actors, director and writers are provided on various memorabilia items  
8 including copies of original movie posters for the movie” as described by you in your answer to  
9 Interrogatory No. 34.

10           **Request for Production No. 33:**     Provide documentary evidence of the licenses You  
11 described in your answer to Interrogatory No. 35 for action figures, toys, T-Shirts, videos, movie  
12 stills and various memorabilia.

13           **Request for Production No. 34:**     Provide copies of receipts, invoices or any written  
14 documentation of income relived for the providing of signatures on various memorabilia items  
15 including copies of movie posters as described in your answer to Interrogatory

16           **Request for Production No. 35:**     Provide written documents evidencing the ‘various  
17 documentaries and anniversary release of the movie” as stated in your answer to Interrogatory  
18 35.

19           **Request for Production No. 36:**     Provide written documents evidencing the ‘new  
20 versions of the original film” which You state you have ‘marketed’ in your answer to  
21 Interrogatory #35.

22           **Request for Production No. 37:**     Provide written evidence of the two documentary  
23 films you describe in your answer to Interrogatory No. 37.

1           **Request for Production No. 38:**     Provide written documentation evidencing the  
2 'trust' referred to in your answer to Interrogatory No. 4.

3           **Request for Production No. 39:**     Provide written documentation of the continuing  
4 'required corporate tax payments' as described by you in your answer to Interrogatory #45.

5           **Request for Production No. 40:**     Provide written evidence of the 'corporate fees' you  
6 claim Image 10 has paid, since inception in 1967 until the present, as described in your answer to  
7 Interrogatory #46  
8

9           **Request for Production No. 42:**     Produce all Documents to support your answer to  
10 Request for Admission #34 in Rusty Lemorande's First Set of Requests for Admission.

11           **Request for Production No. 43:**     Provide written evidence of the licensing of its  
12 trademark Night of the Living Dead and images from the movie Night of the living Dead since  
13 the movie was released in 1968.  
14

15           **Request for Production No. 44:**     Provide all documents, including correspondence,  
16 pertaining to the transfer of the registration from SphereWerx, LLC to Image 10.

17           **Request for Production No. 45:**     Provide all documents, including correspondence  
18 pertaining to the 'previous relationship' and 'work in the past' between SphereWerx LLC and  
19 Image 10.  
20

21           **Request for Production No. 46:**     Produce copies of all interviews mentioned and  
22 described in Answer to Interrogatory #36 unless reasonably available on the Internet, and in such  
23 instance(s):

24           **Request for Production No. 47:**     Produce the links to the readily available interviews  
25 as mentioned and described in Answer to Interrogatory #36.

26           **Request for Production No. 48:**     Provide written evidence of the existence and  
27 occurrence of the 'activities' You describe in your answer to Interrogatory #47.  
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Dated this 13<sup>th</sup> day of March, 2018

By: /s/ Rusty Lemorande  
245 N. Crescent Hts. Blvd #B,  
LOS ANGELES CALIFORNIA 90046

Applicant

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Certificate of Service

A copy of Rusty Lemorande’s First Set of Interrogatories in Opposition No. [91233690](#) was served by email on March 13, 2018 upon Farah Bhatti at the Buchalter Firm, 18400 Von Karman Avenue, Suite 800 | Irvine, CA 92612-0514

/s/ Rusty Lemorande  
Rusty Lemorande

## **EXHIBIT B**

3/27/2018

Serial No: 87090468

Gmail - OBJECTION TO PRODUCTION OF TAX RETURNS

EXHIBIT B

Opposition Number: 91233690

Defendant Lemorande Exhibit



Rusty Lemorande <lemorande@gmail.com>

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## OBJECTION TO PRODUCTION OF TAX RETURNS

5 messages

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**Rusty Lemorande** <lemorande@gmail.com>

Tue, Mar 20, 2018 at 8:30 AM

To: "Bhatti, Farah P." <fbhatti@buchalter.com>, "Meeks, Michael L." <mmeeks@buchalter.com>

Hello:

I once again ask for some clarification (and support) for your argument that tax returns aren't discoverable. I've provided one in some detail. Obviously, a bald assertion from me would not be persuasive to you. It works both ways.

This is my third inquiry, for the record.

Sincerely,

Rusty Lemorande

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RH Lemorande  
P.O. Box 46771  
LA, CA 90046  
tel: 323 309 6146

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Sent from Gmail Mobile Tel 323 309 6146

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**Meeks, Michael L.** <mmeeks@buchalter.com>

Tue, Mar 20, 2018 at 8:53 AM

To: Rusty Lemorande <lemorande@gmail.com>, "Bhatti, Farah P." <fbhatti@buchalter.com>

Mr. Lemorande:

First, none of your requests for production seek tax returns. Second, your requests for production were invalid for the reasons stated, including the excessive number of requests. Third, it has long been recognized that tax returns are privileged from discovery *Aliotti v. Senora*, 217 F.R.D. 496, 497 (C.D. Cal. 2003); *Land Ocean Logistics, Inc. v. Aqua Gulf Corp.*, 181 F.R.D. 229, 238 (W.D.N.Y. 1998). Fourth, even if the tax returns were sought and were not privileged, they would be protected from disclosure and subject to an attorneys eyes only designation, which you could not access.

Regards,

Michael Meeks

**Buchalter**

A Professional Corporation

18400 Von Karman Avenue, Suite 800 | Irvine, CA 92612-0514

Direct Dial: (949) 224-6431 | Cell Phone: (213) 265-4432 | Direct Fax: (949) 224-6210 | Main Number: (949)

760-1121

Email: [mmEEKS@Buchalter.com](mailto:mmEEKS@Buchalter.com) | [www.buchalter.com](http://www.buchalter.com) | Bio

**From:** Rusty Lemorande [mailto:[lemorande@gmail.com](mailto:lemorande@gmail.com)]  
**Sent:** Tuesday, March 20, 2018 8:31 AM  
**To:** Bhatti, Farah P.; Meeks, Michael L.  
**Subject:** OBJECTION TO PRODUCTION OF TAX RETURNS

[Quoted text hidden]

Notice To Recipient: This e-mail is meant for only the intended recipient of the transmission, and may be a communication privileged by law. If you received this e-mail in error, any review, use, dissemination, distribution, or copying of this e-mail is strictly prohibited. Please notify us immediately of the error by return e-mail and please delete this message and any and all duplicates of this message from your system. Thank you in advance for your cooperation. For additional policies governing this e-mail, please see <http://www.buchalter.com/about/firm-policies/>.

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**Rusty Lemorande** <[lemorande@gmail.com](mailto:lemorande@gmail.com)>

Fri, Mar 23, 2018 at 4:21 PM

To: "Meeks, Michael L." <[mmEEKS@buchalter.com](mailto:mmEEKS@buchalter.com)>, "Bhatti, Farah P." <[fbhatti@buchalter.com](mailto:fbhatti@buchalter.com)>

Mr. Meeks:

Thanks for sending the case information which I have read.

I disagree with your assertion that the case support, as you state, that: tax returns are privileged from discovery.

In fact, the ruling in the case first states: "Both parties acknowledge that tax returns are not absolutely privileged."

Later it is stated: "A district court may only order the production of a plaintiff's tax returns if they are relevant and when there is a compelling need for them because the information sought is not otherwise available."

The returns are relevant, there is a compelling need and the information sought is not otherwise available.

Please provide as per the previous requests.

Thank you.

Rusty Lemorande

[Quoted text hidden]

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**Meeks, Michael L.** <[mmEEKS@buchalter.com](mailto:mmEEKS@buchalter.com)>

Fri, Mar 23, 2018 at 4:24 PM

To: Rusty Lemorande <[lemorande@gmail.com](mailto:lemorande@gmail.com)>Cc: "Bhatti, Farah P." <[fbhatti@buchalter.com](mailto:fbhatti@buchalter.com)>

You are not entitled to the tax returns for all the reasons previously stated.

Sent from my iPhone

[Quoted text hidden]



Rusty Lemorande &lt;lemorande@gmail.com&gt;

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## Outstanding issues

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**Rusty Lemorande** <lemorande@gmail.com>

Tue, Mar 13, 2018 at 12:43 AM

To: "Meeks, Michael L." &lt;mmeeks@buchalter.com&gt;, "Bhatti, Farah P." &lt;fbhatti@buchalter.com&gt;

Hello:

### As to TAX RETURNS -

In rebuttal to your proposition that they are not discoverable, I sent you a section from a relevant and ruling case decision on the matter, disputing your assertion, and requesting, once again, the tax returns.

I would think that if you dispute the information I sent, you would respond with your own dispositive info (e.g. statute, ruling). In other words, we would conduct an authentic 'meet and confer'.

Since you haven't responded, and because the discovery clock is ticking, I once again request the returns or a proper argument, with support, as to why they are not discoverable. They are obviously relevant. If you disagree, I ask that you argue that appropriately, as well.

### As to PRIOR DOCUMENT REQUESTS -

In your response, you stated that certain documents would be forthcoming. I have been patiently waiting. However, thereafter, you sent a response stating that *nothing* would be produced. The prior promise of documents seems to have been dilatory. Please explain if my observation is incorrect.

Nevertheless, I will send you a new document request tomorrow which is within the limits.

### As to CONFIDENTIAL ATTORNEY-EYES ONLY:

Please explain, in each instance where you assert that privilege, the basis for your assertion. Please provide the required privilege log, as well.

There are three issues described here. Would you please respond to each individually?

Sincerely,

Rusty Lemorande

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RH Lemorande  
P.O. Box 46771  
LA, CA 90046  
tel: 323 309 6146

# **EXHIBIT C**

Opposition Number: 91233690

Defendant Lemorande Exhibit



Rusty Lemorande &lt;lemorande@gmail.com&gt;

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## Request for Stipulation

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Rusty Lemorande &lt;lemorande@gmail.com&gt;

Wed, Mar 14, 2018 at 5:38 PM

To: "Meeks, Michael L." &lt;mmeeks@buchalter.com&gt;, "Bhatti, Farah P." &lt;fbhatti@buchalter.com&gt;

Michael:

In the TTAB order in February it was stated:

*"Opposer is allowed thirty days from the mailing date of this order to serve supplemental responses to Applicant's first set of requests for admission, **requests for production**, and interrogatories commensurate with the discovery guidelines set forth in this order."* [Emphasis added].

It seems to me more than reasonable to wait for your 'supplemental responses to Applicant's.... requests for production' as ordered by the TTAB.

Which I did.

However, you recently sent me (on March 7, the day before responses were due) a response that stated you were sending nothing. I'm confused. If that was your point of view and intention, why did you not communicate that to me within a few days after February 8th (the date of the order) rather than wait until the final moment? That would have allowed proper time to prepare and send a revised request (which I have).

In addition, the TTAB rule states:

*"If a party upon which requests have been served believes that the number of requests served exceeds the limitation specified in this paragraph, and is not willing to waive this basis for objection, the party shall, within the time for (and instead of) serving responses BN 32054392v2 and specific objections to the requests, serve a general objection on the ground of their excessive number."*

Arguably, by you responding to the first 75 requests, you waived the basis for objection. Please note the words 'if' in the rule, and then the words 'the party shall'.

Finally, in your initial responses, you stated as an answer to at least Requests 3, 4, 5, 8 and 10 that documents were forthcoming.

Why would I not take you at your word, expecting those documents and allowing you time to produce them?

Therefore, I feel your suggestion below that I waited to correct my error is disingenuous. I don't think it is I who has been 'unreasonable' (as you state) but you. I worry this was tactical on your part, causing me to get boxed within a discovery window.

I, once again, renew my request for a 30-day extension stipulation. I also renew my request that you explain why you feel tax returns are not discoverable despite the legal research I provided to you.

Obviously, these are time-sensitive matters. I must ask for a response by the close of business tomorrow.

No waivers should be construed by the above.

Sincerely,

Rusty Lemorande

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